

Federal Bureau of Investigation
Agents Association

April 12, 2016

The Honorable Robert W. Goodlatte
Chairman
House Committee on the Judiciary
2138 Rayburn House Office Building
Washington, DC 20515

The Honorable John Conyers, Jr.
Ranking Member
House Committee on the Judiciary
B351 Rayburn House Office Building
Washington, DC 20510

Re: Substitute Amendment to H.R. 699, the *Email Privacy Act*

Dear Chairman Goodlatte and Ranking Member Conyers:

On behalf of the FBI Agents Association (FBIAA), a voluntary professional association currently representing over 13,000 active duty and retired FBI Special Agents, I write regarding the substitute amendment language for H.R. 699, the *Email Privacy Act*, that the Judiciary Committee intends to consider on April 13, 2016. While H.R. 699 still needs to be improved by including explicit exception language and addressing issues related to provider responsiveness, the substitute amendment language reflects a consideration of the views of the law enforcement community and makes important improvements to the language of H.R. 699.

However, more changes to the language of H.R. 699 should be made before the legislation is enacted. As discussed in our February 29, 2016 letter, the FBIAA believes that H.R. 699 can and should be drafted in a manner that strikes a proper balance between privacy and safety that does not create dangerous new obstacles to effective law enforcement investigations. Specifically, H.R. 699 should:

- Include explicit exceptions to the warrant requirement for emergencies, information provided with consent, publicly available information, "to:from" information from emails, and investigations of crimes such as child pornography, where the time and

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delays associated with warrants and the risks of notification can jeopardize investigations.

- Address the risks posed by criminals and terrorists having access to encrypted communications technology that allows them to coordinate their efforts nationally or internationally without any ability for law enforcement to legally access the evidence of their conspiracies. Congress should take steps to ensure that technology companies allow for lawful access to electronic data, and that terrorists and criminals are not provided easy means to escape detection, investigation, and prosecution.
- Require that internet service providers develop internal response protocols designating at least one individual as a “24/7” point of contact for law enforcement requests, and requiring that responses to requests be made in a timely manner. Additionally, Congress should clarify the language in 18 U.S.C. § 2709 to make it clear that service providers must provide all relevant electronic communications transaction records when they are properly requested by law enforcement officials.

Incorporating these changes to H.R. 699 would expand privacy protections for the public while also minimizing the risks that the legislation would unduly interfere with the detection, investigation, and prosecution of criminals and terrorists.

The FBIAA appreciates the efforts by Members of Congress and staff to consider and address law enforcement concerns about H.R. 699, and believe that the substitute amendment language, while needing improvement, is a meaningful step in the right direction. We look forward to continuing to work with the Judiciary Committee, House Leadership, and the Senate on ECPA issues. If you have any questions, please contact me at rtariche@fbiaa.org or 703-247-2173, or FBIAA General Counsel Dee Martin, dee.martin@bracewelllaw.com, and Joshua Zive, joshua.zive@bracewelllaw.com.

Sincerely,



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President

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